

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:18CR022
	)	
Plaintiff,	)	JUDGE SOLOMON OLIVER, JR.
	)	
v.	)	
	)	
PHILLIP DURACHINSKY,	)	<u>GOVERNMENT’S MOTION FOR</u>
	)	<u>COMPETENCY EVALUATION</u>
Defendant.	)	
	)	

On May 19, 2023, defendant Phillip Durachinsky (“Durachinsky”) filed a Motion for Competency Hearing pursuant to 18 U.S.C. § 4241(a). (R. 176). In support of his motion, Durachinsky attached a report of a recent forensic psychological examination by a psychologist chosen by the defense. Based on the representations in the defense motion, the government respectfully requests that the Court order that Durachinsky undergo a psychiatric or psychological examination at a suitable Bureau of Prisons facility pursuant to 18 U.S.C. §§ 4241(b) and 4247(b) and that a report regarding Durachinsky’s competency to stand trial be prepared as required by 18 U.S.C. § 4247(c).

“A court may order a psychiatric or psychological examination and commit a defendant for a period not to exceed thirty days if the court has “reasonable cause” to believe that the person may be incompetent to stand trial.” *United States v. Jackson*, 179 F.App’x. 921, 931 (6th Cir. 2006) (citing 18 U.S.C. §§ 4241(a)–(b); 18 U.S.C. § 4247(b); *United States v. White*, 887 F.2d 705, 709 (6th Cir.1989)). Here, Durachinsky’s defense counsel submitted a motion requesting a competency hearing based on their interactions with Durachinsky and the report of a

psychologist hired by the defense. This proffer of proof is sufficient to meet the “reasonable cause” standard for ordering a competency evaluation. *See Jackson*, 179 F.App’x. at 933 (explaining that Section 4241 does not require any specific kind of proof to show “reasonable cause,” and noting that “[r]epresentations by counsel have been held sufficient”).

A court-ordered examination is necessary for the government and the Court to fully evaluate Durachinsky’s claims. The evaluation of Durachinsky was completed by a psychologist chosen by the defense, with no opportunity for the government to provide any input or information for the psychologist to consider. A second evaluation is necessary to give the government the opportunity to rebut the defense’s evaluation. *See United States v. Byers*, 740 F.2d 1104, (D.C. Cir. 1984) (noting that, “[o]rdinarily the only effective rebuttal of psychiatric opinion testimony is contradictory opinion testimony”). Further, the government requests an inpatient evaluation at a Bureau of Prisons facility because it will provide the best opportunity for the most thorough evaluation through sustained observation over 30 days. “The value of an inpatient evaluation over another outpatient evaluation is that trained staff, including psychiatrists, psychologists, nurses, ward staff and correctional officers, will observe the defendant over thirty days. Such an evaluation could, therefore, provide the Court with a more complete picture of the defendant’s mental competency.” *United States v. Weston*, 36 F.Supp.2d 7, 13-14 (D.D.C. 1999). Because Durachinsky is already detained pending trial, “an inpatient examination would hardly put any additional restrictions on his liberty.” *Id.*, at 14.

WHEREFORE, for the reasons stated above, the United States respectfully requests that the Court order an inpatient psychiatric or psychological examination of Durachinsky at a Bureau of Prisons facility pursuant to 18 U.S.C. §§ 4241(b) and 4247(b).

Respectfully submitted,

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